IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

TUESDAY, THE 17TH JULY 2007 / 26TH ASHADHA 1929

WP(C).No. 15826 of 2006(H)

AGAINST THE ORDER IN EP. 96 /2005 IN
OS.50/1999 of MUNSIFF COURT, MAVELIKKARA

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PETITIONER:

SIVARAMAN NAIR, AGED 61 YEARS,
S/O. GOPALAN NAIR, KAMALALAYAM VEETTIL,
PALLARIMANGALAM MURI, THEKKEKARA VILLAGE,
MAVELIKKARA.

BY ADV. SRI.R.T.PRADEEP
SRI.R.PADMAKUMAR

RESPONDENTS:

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1. JOHN V.JOHN,
VILAYIL APPARTMENTS, PALLARIMANGALAM MURI,
THEKKEKARA VILLAGE, MAVELIKKARA.

2. MEENAKSHIAMMA,
MOONU THENGIL VEETTIL, EREAHA MURI,
PERINGALA VILLAGE.

3. M.D. SATHEESH KUMAR @ UNNI OF
-DO- -DO-.

R1 BY ADV. SRI.A.SHAFEEK

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 17/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX(WPC 15826/06)

PETITIONER'S EXTS.:

EXT.P1: TRUE COPY OF THE E.P. DATED 17.10.2005 IN E.P.96/05 IN O.S.NO.50/99 OF THE MUNSIFF'S COURT, MAVELIKKARA.

EXT.P2: TRUE COPY OF OBJECTION DATED 7.12.2005 IN E.P.96/05 IN O.S.50/99 OF THE MUNSIFF'S COURT, MAVELIKKARA.

EXT.P3: TRUE COPY OF ORDER IN E.P.96/05 IN O.S.50/99 DATED 10.4.06 OF THE MUNSIFF'S COURT, MAVELIKKARA.

PIUS C. KURIAKOSE,J.

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W.P.(C) No.15826 of 2006

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Dated: 17th July, 2007

JUDGMENT

In this Writ Petition under Article 227 of the Constitution the petitioner who is the first judgment-debtor in E.P.96 of 2005 in O.S.No.50 of 1999 on the files of the Munsiff's Court, Mavelikkara impugns Ext.P3 order of the learned Munsiff by which the court has issued warrant for the arrest of the petitioner. Arrest was sought for by the 1st respondent-decree-holder on the ground that the petitioner has sufficient means to pay off the decree debt and that he is wilfully neglecting to make the payment. The petitioner would resist the prayer contending inter alia that he does not have any income and that he is unemployed. According to him, he is an acute diabetic patient and he has cardiac complaints also. The matter was enquired into by the execution court under Rule 40 Order XXI.

2. On the side of the 1st respondent-decree-holder, he himself was examined as P.W.1. On the side of the petitioner, two documents Ext.B1 certificate issued by the hospital treating the petitioner and Ext.B2 ration card were marked in evidence. Counter oral evidence consisted of the testimony of the petitioner himself. The court below after meticulously analysing the evidence on record found that the

petitioner's contention that he never had sufficient means to pay the decree debt after the decree was passed against him is wrong. It was noticed that the petitioner could repay another loan of Rs.40,000/- which he had taken in the meanwhile.

3. Mr.R.T.Pradeep, learned counsel for the petitioner and Mr.A.Shafeek, learned counsel for the 1st respondent addressed me at length. Apart from addressing me on the various grounds raised in the Writ Petition, Mr.R.T.Pradeep placed strong reliance on the judgment of Janaki Amma,J. in **Joseph K.Mathai v. Luckose Kurian** (I.L.R. 1979 (1) Kerala 205) and argued that a further opportunity is to be given to the judgment-debtor before he is detained in civil prison to show-cause against such detention.

4. The attractiveness of the submissions of Mr.R.T.Pradeep notwithstanding, they are too technical for receiving acceptance at the hands of this court sitting in supervisory jurisdiction under Article 227 of the Constitution. The judgment of Janaki Amma,J. in **Joseph K.Mathai v. Luckose Kurian** (supra) in my opinion does not support the argument that in a case where an enquiry under Rule 40 Order XXI has been conducted into the means of the judgment-debtor concerned and also into the question whether he was wilfully

negligent in the matter of paying decree debt, a further opportunity should be given to the judgment-debtor to show cause against actual arrest even after finding has been entered into regarding the sufficiency of means and wilful nature of the negligence.

The challenge against the impugned order fails and the Writ Petition will stand dismissed.

srd **PIUS C.KURIAKOSE, JUDGE**